Item No.02

BEFORE THE NATIONAL GREEN TRIBUNAL
CENTRAL ZONAL BENCH, BHOPAL

(By Virtual Mode)

Appeal No.07/2023(CZ)
(I.A. No. 42/2023 and I.A. No. 43/2023)

S.K.S. Ispat & Power Limited — Appellant(s)

Versus

SEIAA (C.G.) & Others — Respondent(s)

Date of hearing: 21.07.2023

CORAM: HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER

For Appellant(s) : Mr. Ankur Pandey, Advocate

Order in I.A. 43/2023

1. This is a delay condonation application stating that the appeal in question has been filed beyond 43 days in as much as the order was passed on 31.03.2023. It is explained that order dated 31.03.2023 was never communicated to appellant by respondent 1 and appellant has got the said order online, per chance.

2. Section 16 provides limitation for filing appeals. It says that limitation of 30 days shall be computed from the date from which order or decision or direction or determination is communicated to the person concerned. Further there is provision of condonation of delay upto a maximum period of 60 days in proviso to Section 16.

3. We, therefore, allow this I.A. 43/2023 and firstly hold that there is no delay in filing appeal and in any case delay of 43 days in filing appeal is hereby condoned.

Order in Appeal 07/2023

4. Heard Mr. Ankur Pandey, Advocate for appellant at length.

5. This appeal under Section 16 Read with Section 18 of National Green Tribunal Act 2010 (hereinafter referred to as '**NGT Act 2010'**) has been filed against order dated 31.03.2023 passed by State Environment Impact Assessment Authority, Chhattisgarh (hereinafter referred to as **'SEIAA, Chhattisgarh'**) recommending penalty under Office Memorandum dated 07.07.2021 to the extent of Rs. 997.34 lakhs since appellant have proceeded with the establishment of coal washery unit by purchasing and installing machinery and plants, raising constructions and creating miscellaneous fixed assets as per the following details without Environmental Clearance (hereinafter referred to as '**EC**'):

क्र.	सम्पत्ति	कीमत (करोड़)
1.	भूमि	शून्य
2.	प्लांट एवं मशीनरी	9.5
3.	भवन एवं संरचनाएं	2.4
4.	Misc. fixed assets	2.6
कुल		14.5

6. Learned Counsel for appellant has assailed the said order only on the ground that penalty has been computed on the total turnover of entire plant and not expansion i.e., coal washery plant which the appellant sought to install and during pendency of grant of environment clearance, establishment activities were undertaken by raising constructions, installing machines etc.

7. However, we find no force in the submission. From record it is evident that coal washery unit is not an expansion plan of steel plant but a new project sought to be installed at the site in question where steel plant was already established.

8. The facts as stated in memo of appeal are that appellant company had acquired 190.76 acres of land where at it has installed and operated a steel plant after obtaining EC on 25.08.2006 under the provisions of Environment Impact Assessment Notification dated 1994 (hereinafter referred to as **'EIA 1994'**). For establishment of coal washery unit, appellant applied for grant of EC under Environment Impact Assessment Notification dated 14.09.2006 (hereinafter referred to as '**EIA 2006'**). Appellant intended to establish coal washing unit on the land where steel plant was already established since a vacant land was available and coal washery plant was to be used for washing the coal which was used as a fuel and necessary raw material for plant. The appellant applied for grant of EC for coal washery plant sometime in 2008, after obtaining Consent to Establish (hereinafter referred to as **'CTE'**) from Chhattisgarh State Pollution Control Board (hereinafter referred to as **'CSPCB'**) on 02.06.2007.

9. It is not disputed before us that no EC in respect of coal washery units has been granted till date. Therefore, appellant was not entitled to raise any construction or proceed with any other activity for establishment of coal washery plant, in view of prohibition under para 2 of EIA 2006 which reads as under:

> *"**Requirements of prior Environmental Clearance (EC):-** The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for matters falling under Category 'A' in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category 'B' in the said Schedule, **before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity**:*
> *(i) All new projects or activities listed in the Schedule to this notification;*
> *(ii) Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization;*
> *(iii) Any change in product - mix in an existing manufacturing unit*

included in Schedule beyond the specified range."

10. It is also evident from record that total land available with appellant where steel plant was established being 121.4 hectares out of which upon 2.529 hectares appellant sought to establish coal washery unit with the capacity of 0.72 millions per annum.

11. The facts stated in the impugned order dated 31.03.2023 also show that out of the total land available i.e., 121.4 hectares with appellant, 44.21 hectares was not part of project and the project comprised of 77.19 hectares whereof 2.529 hectares was to be utilized for establishment of coal washery unit. The appellant did not wait for grant of EC for coal washery unit and only on the basis of CTE granted by CSPCB proceeded with construction activities and installation of machines etc. and therefore respondent 1 has computed penalty as per Provisions of Para 2(a) (ii) of office memorandum dated 07.07.2021.

12. The counsel for appellant sought to argue that coal washery unit was in fact an expansion project and not a new project and respondent 1 in computing penalty and treating it to be a new project has erred in law.

13. However, despite repeated query he could not show as to how coal washery unit could be said to be an expansion project of steel plant since coal washing unit is not an integral part of steel plant and it does not expand steel plant project.

14. We are satisfied that respondent 1 has rightly considered coal washery unit to be a new project and therefore has applied the procedure of computing penalty as provided in Para 12(a) (ii) of office memorandum dated 07.07.2021.

15. No other point has been argued before us.

16. We, therefore, do not find any error or illegality in the impugned order warranting interference.

17. The appeal, being devoid of merits, is dismissed.

18. In view of the order passed in the appeal, all other I.A.s stand disposed of.

Sudhir Agarwal, JM

Dr. Afroz Ahmad, EM

July 21, 2023
Appeal No.07/2023(CZ)
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